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Attorneys for STATE OF ARIZONA

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

P1360

STATE OF ARIZONA, Plaintiff, vs. STEVEN CARROLL DEMOCKER, Defendant.	CAUSE NO. CR2008-1339 MOTION FOR *IN CAMERA* REVIEW OF RECORDS DEMANDED PURSUANT TO A PUBLIC RECORDS REQUEST UNDER A.R.S. § 39-121 AND FOR ORDER AUTHORIZING OR ENJOINING THE RELEASE OF SAID RECORDS Div. 6 Honorable Warren Darrow

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby move this court for an order authorizing or enjoining the release of certain records related to the prosecution of defendant STEVEN CARROLL DEMOCKER under Case No. 201080461 to members of the press pursuant to a request made under A.R.S. §39-120 et seq. The reasons the court should grant this motion are explained in the Memorandum of Points and Authorities attached in support of this motion.
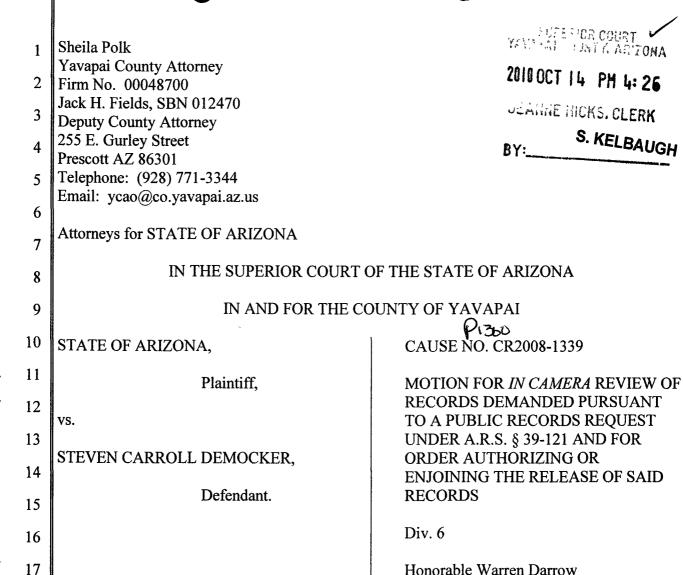
WHEREFORE, the Yavapai County Attorney prays that this court:

Office of the Yavapai County Attorney
255 E. Gurley Street, Prescott, AZ 86301
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1. Inspect the September 19, 2010 audio and transcripts of the interview with Renee Girard and the audio of the July 21, 2009 interview of Steven DeMocker and determine which items should be disclosed pursuant to A.R.S. §39-120 et seq.;

2. For such other relief the court deems fair and just.

RESPECTFULLY SUBMITTED this ___14___ day of October, 2010.

Sheila Polk
YAVAPAI COUNTY ATTORNEY

By:_____
Jack H. Fields
Deputy County Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

BACKGROUND

This case originated as a criminal prosecution of defendant STEVEN CARROLL DEMOCKER (DeMocker) by the State through the Yavapai County Attorney's Office ("YCAO"). DeMocker has been charged primarily with first-degree murder of his former wife Carol Kennedy. The murder trial began in May, 2010, and is still ongoing. Due to the circumstances of Ms. Kennedy's death and the positions of Ms. Kennedy and Mr. DeMocker in the Prescott area community, the prosecution and trial has produced significant interest in the news media locally and nationally.

Recently, YCAO opened a second criminal case against DeMocker. On approximately September 24, 2010, in Case No. CR201080461, Mr. DeMocker was charged with eight additional criminal counts including fraud schemes, forgery, conspiracy to commit fraud, and

tampering with physical evidence. The new charges were based on allegations that DeMocker caused an e-mail to be created that blamed others for the death of Carol Kennedy. Evidence gathered leading to the new charges include the audio and transcript of a September 19, 2010 interview with Renee Girard (DeMocker's former girlfriend) and the audio of an interview with DeMocker on July 21, 2009.

Between September 27, 2010 and October 4, 2010, YCAO received several requests for records pursuant to A.R.S. §§ 39-120 et seq. from media organizations, including NBC Dateline, ABC 20/20, local radio station KYCA, and local newspaper The Daily Courier. The September 19, 2010 audio and transcripts of the Renee Girard interview and the July 21, 2009 audio of the DeMocker interview were specifically requested. On October 5, 2010 YCAO informed William Feldhacker, Mr. DeMocker's defense counsel in CR 201080461, of the records request, and informed him that YCAO would wait 5 days before responding to the request in order to give Mr. DeMocker's defense counsel time to file any objections to the disclosure. Mr. DeMocker's defense counsel in CR 201080461 informed Larry Hammond, Mr. DeMocker's defense counsel in the present case (CR 20081339), of the proposed disclosure. On October 11, 2010 by e-mail Mr. Hammond informed YCAO that he objected to the disclosure of the audio and/or transcripts of the September 19, 2010 Renee Girard interview and the July 21, 2009 DeMocker interview. Mr. Hammond alleged that such a disclosure would interfere with Mr. DeMocker's rights to a fair and just jury trial, and that disclosure would constitute a violation by YCAO of the Arizona Rules of Professional Conduct ("ARPC") in general, and ARPC 3.8 in particular.

STATE'S POSITION ON RELEASE OF RECORDS

YCAO believes the audio and transcripts of the September 19, 2010 Renee Girard interview and the audio of the July 21, 2009 DeMocker interview are public records, and public

disclosure of material redacted of private information is appropriate because it will not seriously impinge upon the rights of the defendant or the victims in this case, and will not be seriously detrimental to the State's interest. A.R.S. §39-121.01. Redacted material would be limited to personal identifying information.

REQUEST FOR *IN CAMERA* INSPECTION AND RULING

DeMocker's defense counsel have raised the issue of DeMocker's fair trial rights regarding the release of the requested records, and stated that YCAO would be in violation of the ethics rules of the legal profession if the records are released. YCAO believes that the Court is in the best position to determine if release of the requested records does constitute a threat to DeMocker's rights. An *in camera* review of the material proposed for release is the best course of action to assure that the rights of the defendant in this matter are not impinged, and the right of the public to be informed of government activities is respected.

CONCLUSION

This Court should review all disputed material *in camera* and issue a ruling determining what is subject to disclosure under A.R.S. §39-121.01.

CERTIFICATE OF MAILING

COPY of the foregoing mailed
this 14th day of October, 2010, to:

Larry A. Hammond
Anne M. Chapman
Osborn Maledon, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, AZ 85012-2793

And

1 John M. Sears
   107 N. Cortez Street, Suite 104
2 Prescott, AZ 86301

3 *Attorneys for Defendant Steven DeMocker (CR20091339)*

4

5 William Feldhacker
   Yavapai County Public Defender's Office
   595 White Spar Rd
6 Prescott, AZ 86303

7 *Attorney for Steven DeMocker (CR201080461)*

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9 Chris Dupont
   245 W. Roosevelt, Ste. A
   Phoenix, AZ 85003
10

11 *Attorney for Katie DeMocker and Charlotte DeMocker*

12 John Napper
    140 N. Granite St.
13 Prescott 86301-3002

14 *Attorney for Renee Girard*

15 Jacob Janusek
    3127 Mountain Lake Dr
16 Prescott, AZ 86301.

17

18 Dateline NBC
    c/o Michelle Madigan
    3000 W. Alameda Ave
19 Burbank, CA 91523

20

21 ABC News 20/20
    c/o Julie Caifa
    147 Columbus Ave.
22 New York, NY 10023

23

24 KYCA Radio News
    c/o Don Steel
    P.O. Box 1631
25 Prescott, AZ 86302

26

    The Daily Courier
    c/o Lisa Irish

1 1958 Commerce Center Cir.,
Prescott, AZ 86301

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3 By: Rhonda Grub

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